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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,891	03/19/2004	Lou Carolla	45-309	7138
23117	7590	10/31/2005	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			KASTLER, SCOTT R	
			ART UNIT	PAPER NUMBER
			1742	
DATE MAILED: 10/31/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/803,891

Applicant(s)

CAROLLA ET AL.

Examiner

Scott Kastler

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13, 15-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-18 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### ***Drawings***

The substitute drawings submitted by the applicant on 9/9/2005 are acceptable and overcome the objection to the drawings advanced in the previous office action, mailed on 5/9/2005.

### ***Claim Objections***

Claim 18 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The above claim does not fairly further limit independent claim 16, from which it depends because all liners are to some extent “discardable” (i.e. can be discarded when no longer desired) and “separable”, thereby allowing any liner meeting the requirements of independent claim 16 to meet the requirements of dependent claim 18.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13, 15-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of the instant disclosure. As described in the description of prior art figures 1-3 of the instant disclosure for example, the admitted prior art of the instant disclosure

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teaches a ladle and liner therefore including an outer metal shell and liner comprising a continuous inner sidewall (11 for example) and barrier (10, 14 or 16) to define a spout for discharging molten metal, constructed in a manner meeting the requirements of the instant claims, including the use of "KALTEK" material if desired (see page 3 of the instant specification for example) thereby showing all aspects of the above claims except the specifically recited ladle configuration (where the sidewall have an inwardly extending portion to meet the longitudinal edges of the barrier, rather than as shown in the admitted prior art of the instant disclosure where the barrier extends to be inserted into the continuous sidewall).

However, the ladle and liner of the admitted prior art of the instant disclosure employs the same components in substantially the same manner with substantially the same results as that of the instant claims. It has been well settled that where, as in the instant case, no new or unexpected result are shown to arise therefrom, motivation to alter the shape or configuration of a component shown by the applied prior art (the continuous sidewall and barrier tile of the prior art ladles), without material affecting the function of the components or the apparatus as a whole, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made. See MPEP 2144.04 IV B and *In re Dailey*, 149 USPQ 47. In the instant case, absent any demonstrated new or unexpected results arising therefrom, motivation to alter the shape or configuration of the sidewall and or barrier tile of the ladle and liners of the admitted prior art of the instant disclosure to any other equally useful shape, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

***Response to Arguments***

Applicant's arguments filed on 9/9/2005 have been fully considered but they are not persuasive. Applicant's argument that the objection to claim 18 as not further limiting is not understood is not persuasive because as stated in the above rejection, since all liners are to some extent both separable (by breaking up with a jackhammer for example) from a ladle and discardable (can be thrown away or scrapped), all ladle liners meeting the requirements of independent claim 16 also meet the requirements of claim 18.

Applicant's further argument that the newly recited shapes and configurations of the instantly claimed ladle liner impart improved results is also not persuasive because these results have not yet been presented in proper affidavit or declarative form, and it has been well settled that argument and conclusory statements alone, are insufficient to establish new or improved results. See *In re Wood et al*, 199 USPQ 137.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Scott Kastler  
Primary Examiner  
Art Unit 1742

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